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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/806,536	03/23/2004	Olivier Courtin	1056-04	2502

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IP GROUP OF DLA PIPER US LLP
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EXAMINER

YU, GINA C

ART UNIT	PAPER NUMBER
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1617

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/19/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/806,536	Applicant(s) COURTIN, OLIVIER	
	Examiner Gina C. Yu	Art Unit 1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 December 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Receipt is acknowledged of amendment filed on December 22, 2006. Claims 1-14 are pending. Claim rejections made in the previous Office action dated July 3, 2006, are maintained for the reasons of record, and reproduced below.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 2, 4, 8-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boo et al. and JP2000-454466 in view of Simopoulos et al. (J. Am. Coll. Nutr. August 1992, 11(4):374-82).

Boo et al. teach that extract of *Alpinia officinarum* Hance roots contains flavonoids (epigallocatechine gallate, galangine or baicaleine) and protects cells against active chemical oxygen species which provokes cell degradation, mutations, cancer and aging. Since flavonoids are polar compounds, it is viewed obvious that the extract of *Alpinia officinarum* Hance is water-soluble.

JP2000-454466 ('466) teaches a cosmetic composition containing at least one plant extract selected from *Alpinia officinarum* Hance among others. The reference teaches that the composition is in the form of lotion, cream, oil, shaving agent, hair tonic, etc, and has high moisture-retaining effects, prevents and remedies dry, chapped, itchy and inflamed skin. See Advantage. The reference also teaches formulating a bath composition comprising detergent or perfume. See Independent Claims and Use; instant claims 8 and 9. In claims 10-14, the terms "mens' skin care", "shaving",

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"sunless tanning", "men's hair care" and "men's after shave" denote the intended future use of the composition and do not further define the structural limitation of the claims.

Thus no patentable weights are given.

Boo et al. and '466 fail to teach buffalo grass extract and purslane extract.

Dimentii et al. teach that Hierochloe grass extract is an antioxidant and bactericide, and stabilizes oil and water emulsions. See abstract. The extract is used in food industry, which indicates that the extract is safe and biologically acceptable. The reference teaches that the extract is first added to water and subsequently added to oil, which indicates that the extract is water-soluble.

Simopoulos teaches that samples of purslane (*Portulaca oleracea*) contain omega-3 fatty acids such as alpha-linolenic acid. Since alpha-linolenic acid is a polar compound, it is obvious that the extract containing alpha-linolenic acid is water-soluble.

It would have been obvious to one of ordinary skill in the art at the time the present invention was made to modify the composition of JP2000-454465 by further adding to the cosmetic composition comprising *Alpinia officinarum* Hance, Hierochloe grass extract as motivated by Dimentii et al., because the latter teaches that Hierochloe grass extract is safe, stabilizes water and oil emulsion, and provides antioxidant and bactericide properties. Simopoulos would have also motivated the skilled artisan to add purslane extract because the reference teaches that purslane is a rich source of omega-3 fatty acids. The skilled artisan would have had a reasonable expectation of successfully producing a stable cosmetic composition comprising enhanced antioxidant and bactericide properties.

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Claims 3 and 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boo et al., the '466 abstract, Dimentii and Simopoulos as applied to claims 1, 2, 4, 8-14 as above, and further in view of Barrett et al. (US 6455057 B1), Plant Guide (USDA NRCS, February 2000), and Bracco (US 5445822).

The references fail to teach the weight amount of the plant extracts as used in a cosmetic composition.

Barrett teaches a topical composition comprising a phenolic compound such as coumarins and flavonoids in the amount of 0.01-10% by weight, most preferably 0.1-5 %. See col. 3, line 56 – col. 4, lines 32.

Plant Guide teaches that buffalo grass (sweet grass, *Hierochloa odorata*) contains coumarin which gives the plant its characteristic sweet smell, which indicates that one of ordinary skill in the art would have known that buffalo grass extract contains coumarin. See p. 1, Uses, Caution.

Bracco teaches cosmetic compositions containing fatty acid triglyceride mixtures, including sunflower oil and oils comprising more than 35% of alpha-linolenic acid, an omega-3 fatty acid. See col. 2, line 38 – col. 3, line 10. See col. 2, lines 50 – col. 3, line 9.

It would have been obvious to one of ordinary skill in the art at the time the present invention was made to modify the teaching of the combined references by adding the plant extracts that contain coumarins and flavonoids in the weight amount as motivated by Barrett because the latter teaches the range of the amounts of the active compounds that is used to formulate a cosmetic composition. Adding sunflower oil and

adjusting the amount of the purslane extract as motivated by Bracco would have been also obvious because the reference teaches the amount of omega-3 fatty acid that is conventionally employed to formulate a cosmetic composition. The skilled artisan would have had a reasonable expectation of successfully formulating a product which renders the cosmetic benefits of the active ingredients.

Response to Arguments

Applicant's arguments filed December 22, 2006 have been fully considered but they are not persuasive.

Applicants generally argue that the combination of the prior art references is improperly made because the solubility of the active ingredients is incompatible with one another. In response, examiner respectfully points out that using appropriate solubilizing agents to make a pharmaceutical composition or incorporating the agents in separate phases to make an emulsion (i.e., lotion or cream) is well within the skill of the art. Combining the active agents of varying solubility is not considered a nonobvious invention.

Applicants also assert that Dimentii is not related to the cosmetic field. As indicated in the rejection, the fact that Herochloe grass extract is used in food industry is an indication that the compound is suitable for topical use as well.

Conclusion

No claims are allowed.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

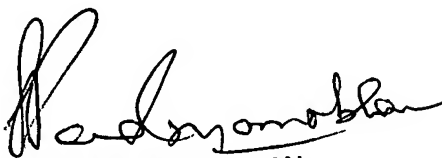
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 571-272-8605. The examiner can normally be reached on Monday through Friday, from 8:00AM until 5:30 PM..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Gina C. Yu
Patent Examiner



SREENI PADMANABHAN
SUPERVISORY PATENT EXAMINER